

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

TEXAS BANKERS ASSOCIATION;
RIO BANK, MCALLEN, TEXAS; and
AMERICAN BANKERS ASSOCIATION

Plaintiffs,

v.

Case No: 7:23-cv-00144

CONSUMER FINANCIAL PROTECTION
BUREAU; and ROHIT CHOPRA, in his official
capacity as Director of the Consumer Financial
Protection Bureau,

Defendants.

**PLAINTIFFS'/INTERVENORS' RESPONSE TO
MOTION TO AMEND COMPLAINT (ECF NO. 108) AND
MOTION FOR JUDGMENT ON THE PLEADINGS (ECF NO. 107)**

Plaintiffs file this response to the motions brought by Intervenor the Farm Credit Council, Texas Farm Credit, and Capital Farm Credit (collectively, the “Farm Credit Intervenor”) related to their argument that the CFPB lacked funding under 12 U.S.C. § 5497 when it issued the Final Rule at the center of this case. *See* ECF Nos. 107 & 108. While Plaintiffs have not yet been able to fully vet the argument and any possible consequences for the banking industry, it is apparent that the underlying argument must be addressed. Plaintiffs and their members, however, cannot afford further delays in addressing the root problems the § 1071 Final Rule poses under the Administrative Procedure Act. As a result, Plaintiffs ask this Court to allow the Farm Credit Intervenor to amend their Complaint and bring the funding argument, but to proceed with issuing a partial summary judgment ruling on the APA challenges that are ripe. This will potentially allow Plaintiffs, Intervenor, and their members to have relief from preparing for the Final Rule even while the Court considers the alternate argument now raised.

As this Court previously recognized, “the Fifth Circuit has accepted projected compliance costs as constituting irreparable harm.” ECF No. 25 at 14 (citing *Texas v. EPA*, 829 F.3d 405, 433–44 (5th Cir. 2016)). But because the Final Rule was on hold until *CFPB v. Cmty. Fin. Servs. Ass’n of Am.*, 601 U.S. at 418 (2024), was decided, the parties were able to fully brief their cross-motions and not seek emergency relief. Now that *Community Financial* has been decided, the CFPB has revised its compliance dates to account for the prior injunction. Nevertheless, the banks are back on the compliance clock and will again need to start preparing to implement the Final Rule next year. And the Court is aware that the compliance costs will be substantial, too. *See* ECF No. 78 at 4 (showing current implementation costs as exceeding \$6.8 Billion *for the banking industry alone*).

The Court has been clear that it fully appreciates the urgency of the situation. Therefore, the Plaintiffs ask that the Court issue a partial summary judgment order in line with its previously-contemplated schedule while the funding argument is under consideration. This will give Plaintiffs, Intervenor, and Defendants additional certainty about preparations that are already underway.

CONCLUSION

Based on the foregoing, Plaintiffs-Intervenor respectfully request that this Court issue its ruling on the Cross-Motions for Summary Judgment and Motion to Supplement the Administrative Record while the Farm Credit Intervenor's motions are pending.

August 2, 2024

Respectfully submitted.

/s/ John C. Sullivan

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on August 2, 2024, via the CM/ECF system and served via CM/ECF on all Counsel of record.

/s/ John C. Sullivan
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